Cleveland Pneumatic Company *and* Aerol Aircraft Employees Association. Case 8-CA-16637

26 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 22 September 1983 Administrative Law Judge Thomas A. Ricci issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in support of the decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Cleveland Pneumatic Company, Cleveland, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The judge erroneously states that on Saturday, 26 March 1983, the Respondent provided the Union the list of employees scheduled to work Sunday overtime. The list in fact was furnished by the Respondent on Friday, 25 March. This error does not affect the result of our decision.

[2] In agreeing with the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by warning and threatening to discharge union steward Williams, we do not adopt his reliance on Williams' subjective testimony concerning the meaning of the language added to the posted overtime notices.

Member Dennis finds it unnecessary to rely on the judge's citation to *Illinois Bell Telephone Co.*, 255 NLRB 380 (1981), a case she regards as factually distinguishable. In *Illinois Bell*, a union leaflet endorsed refusals to obey a direct order to work overtime and encouraged others to repeat such conduct, whereas in the instant case the language union steward Williams added to the posted overtime notices merely advised employees of his reading of the contract.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge. A hearing in this proceeding was held at Cleveland, Ohio, on August 12, 1983, on complaint of the General Counsel against Cleveland Pneumatic Company (the Respondent or the Company). The complaint issued on May 19, 1983, on a charge filed on March 30, 1983, by Aerol Aircraft Employees Association (the Charging Party or the Union). The only issue presented is whether the Respondent unlawfully, in violation of Section 8(a)(1) of the Act, threatened to discharge a union steward for having engaged in statutorily protected concerted activities. Briefs were filed by the Respondent and the Charging Party.

On the entire record and from my observation of the witnesses I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Ohio corporation, with its office and place of business in Cleveland, Ohio, is engaged in the manufacture and assembly of aircraft landing gear. Annually it sells and ships from that location products, goods, and materials valued in excess of $50,000 directly to points outside the State of Ohio. I find that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that Aerol Aircraft Employees Association is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The pertinent facts in this case are not disputed. The parties have long been bound by successive collective-bargaining agreements. The contract in effect in March 1983, the time of these events, provided, among other things, as follows:

> In the event it becomes necessary to work overtime, such work shall be distributed equally as near as possible, in a practical manner, among employees on all shifts in the affected occupation of the department. The Company shall not require any employee to change shifts in order to equalize overtime. Overtime within occupation shall be kept separate by building location.
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> Notification in advance will be given to the Association for any and all overtime. The Association shall be notified of Saturday overtime schedules not later than 1 p.m. on the preceding Thursday and the employees involved shall be notified not later than 1:45 p.m. on the preceding Thursday . . . The Association shall be notified of Sunday and/or full week overtime schedules not later than 1 p.m. on the preceding Friday and the employees involved shall be notified not later than 1:45 on the preceding Friday.

On March 25, a Friday, the Company learned it would need overtime work to be performed the next day. It prepared a list of names for such assignment and gave it to Robert Williams, the union steward, for posting. It has always been the practice to give the notice to the Union so it could maintain its own records as to who is entitled to overtime the next time. The next day, Saturday, March 26, the Company decided it needed overtime work to be done on Sunday, and again gave the requisite list of names and work to be done to the union steward. The timing of both notices ignored the contract provi-

sion which required that the notices for Saturday overtime had to be posted on Thursday and the one for Sunday overtime had to be posted on Friday. Aware of the contract requirement, Williams wrote, in his handwriting, on each of the notices: "Union does not authorize this overtime," and added his initials; he then posted both on the usual bulletin board.

Overtime work is a desirable thing, of course, for it brings more money. It is not mandatory in this place of business and, if a scheduled employee chooses not to do it, he tells the supervisor and the Company finds someone else to do it. But the unwilling employee pays a price; he is charged with having enjoyed it and goes to the bottom of the list as to when he will again be entitled to overtime assignment, in rotation, as it were. If he learns of the assignment on Thursday—for Saturday, he has 2 days to prepare for it. If he only has 1 day's notice—as happened on March 25 and March 26—he may not have enough time to prepare for it. That must be why the contract provides there must be 2 days' advance notice. The practice has been that, if the Company does not give the requisite 2 days' notice, the unwilling employee is not treated as though he had enjoyed the benefit; he stays at the top of the list for the next overtime assignment. Nevertheless, the 1-day notice instead of the requisite 2 days' notice does disadvantage him.

As it turned out, the employees whose names were on these two late lists did not do the overtime; it was performed by others.

On Monday, March 28, Curtiss Tschantz, the Respondent's manager of hourly relations who administers the union contracts, called Williams, together with David Posey, the Union's chairman of the grievance committee, to his office. There he faulted Williams for having written what he did on the notices, and added, "If this ever happens again, you are subjecting yourself to discipline." When Williams asked, "Are you talking discharge," Tschantz said, "Yes, I am." That that conversation took place exactly as Williams testified, Tschantz admitted clearly.

The complaint alleges that this oral warning to Williams, coupled with a threat of discharge if he repeated what the manager called an improper action, was a form of coercion, a restraint on perfectly proper activity by the union steward, and therefore a violation of Section 8(a)(1) of the Act. I think the complaint is correct.

The Respondent's defense is a contention that what Williams wrote on those two notices amounted to a request that the scheduled employees engage in a strike by refusing the overtime work assignments. The contract then in effect did contain a no-strike clause. Therefore, goes the argument, the supervisor had a right to threaten discipline, even discharge, to a union agent who advised the employees to engage in the strike in violation of the collective-bargaining agreement. I see in this argument no more than an attempt to distort the meaning of words, and I find no merit in the defense.

This late posting of overtime work assignments had been a recurring problem, the Union many times quarreling with the Company over its practice. In fact, a number of grievances had been filed in the past because of it. It is true Williams had never before given vent to his disagreement by writing anything on the late notices, but that is not the reason why he could not take the necessary step this time. It is a fact the two notices did violate the written agreement in two respects. They did not give the employees 2 days' notice and they did not distribute the overtime work equitably among the shifts. The Company does not dispute these truths. When Williams informed the employees that the Union had not "authorized" those notices, all he was saying is it had not agreed to a departure from the contract terms. He was doing no more than publicizing his correct reading of the contract. There was nothing in his language that told the employees what they were supposed to do. At the hearing Williams said: "I was giving the employees an opportunity to decide themselves whether they wanted to work or they did not want to work." His testimony is consistent with what he wrote on the notices. Indeed, it was his duty, as the regular steward on the job, to call matters of this kind to the attention of the membership.

When it developed that the scheduled employees were unable, or chose not to work, the Company found others to do the work. Two of these who did so worked out of their classifications, contrary to union rules. Williams brought internal union charges against them, and they were fined $50 in consequence. A grievance filed over that dispute is still pending and may go to arbitration. The Respondent points to his fine imposed by the Union as proof that when Williams told the employees the overtime notices were not authorized by the Union, it was tantamount to strike inducement. A National Labor Relations Board charge was filed against the Union based on those fines, but nothing has come of that proceeding. But, in any event, the two situations were not parallel. It is one thing to impose a fine for working, no matter what kind of work is performed. It is something else again to do no more than inform the employees of the Union's position—correctly stated—that a company is acting in violation of the governing collective-bargaining agreement.[1]

I find the evidence in its entirety insufficient to prove the asserted affirmative defense. I find that by threatening to discipline the union steward, and by threatening him with discharge, because of what he wrote on that notice, the Respondent violated Section 8(a)(1) of the Act. *Illinois Bell Telephone*, 255 NLRB 380 (1981); *Container Corp.*, 244 NLRB 318 (1979).

IV. THE REMEDY

The Respondent must be ordered to cease and desist from again committing the kind of unfair labor practice found in this case.

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[1] In its brief the Respondent sees an instruction by Williams calling for strike action in his admission that he did tell Tschantz his purpose was to "stop an infraction before a grievance was filed." An "infraction" by whom? The only infraction that had occurred was the Company's violation of the contract in not giving the requisite 2 days' notice. This is what Williams was talking about, and this is what he indicated on the posted notice.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By orally warning the union steward, and by threatening to discharge him, for having engaged in protected union activity, the Respondent has violated and is violating Section 8(a)(1) of the Act.
2. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Cleveland Pneumatic Company, Cleveland, Ohio, its agents, officers, successors, and assigns, shall

1. Cease and desist from

(a) Reprimanding or threatening to discharge union officers for having engaged in protected union activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Post at its place of business in Cleveland, Ohio, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT reprimand or threaten to discharge any union official for engaging in protected union or concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

CLEVELAND PNEUMATIC COMPANY